19 D.B. CENTRAL EXCISE APPEAL NO. 82/06

(M/s Shree Nath Cement Industries Pvt. Ltd. & Anr. Vs. Commissioner, Central Excise , Jodhpur)

DATE 17.1.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. CHATRA RAM JAT,J.

Mr. J.L.Purohit, for the appellant.

No other question has been raised in this appeal against the order of the Tribunal dated 19.5.2006 except to the extent, the quantification of Excise Duty which remains payable by the appellant after allowing the relief has not been made the subject of a reasoned order by showing how the amount of duty has been calculated and consequently the amount of penalty is quantified.

We are of the opinion that this issue cannot be considered as a question of law at all. The quantification for excise duty is to be as per the rates prescribed by the Terrif Act vis-a-vis the quantity/value of the goods on removal from factory or other authorised place. There is no dispute before the Tribunal about the rate, applied on alleged clandestine removal of excisable able goods viz the cement bags. In fact the only question before the Tribunal that has been raised was that while quantifying the Duty on clandastine removal of cement bags, weight of estimated cement bags clandastine received and clandestinely removed has

been add up. The appellant has contended before the Tribunal that the clandestine removal of the bags could only relate to clandestinely received the commodity by it. That contention having been accepted by the Tribunal can sought reduction on the duty was made and the duty demand of raised at Rs.2,46,682 was reduced to Rs. 1,78,180/-. If the appellant is aggrieved with the arithmetical calculation of the computation of Duty, he could apply for the ratification of the mathematical mistake before the concerned authority. However, no appeal is to be entertained only for verifying arithmetical calculation.

Similarly, we find that penalty has been reduced to Rs. 1,50,000/- while sustaining the Duty demand to Rs. 1,78,180/- . Suffice it to say that Section 11AC of the Central Excise Act, 1944 makes a manufacturer liable to a penalty equal to the amount of the duty quantified under Section 11AC. The amount of penalty which has been sustained by the tribunal is less than the amount of the Duty. In that view of the matter, we are of the opinion, that no question of law arises for consideration in this appeal.

The appeal is, therefore, dismissed in limine.

(CHATRA RAM JAT),J. **(RAJESH BALIA),J.**

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